



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 19557938

Date: FEB. 22, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner claims to be a provider of data integration solutions, and seeks to permanently employ the Beneficiary as its Chief Executive Officer (CEO) under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Nebraska Service Center denied the petition on multiple grounds. The Director determined that the Petitioner did not establish, as required, that the Beneficiary was employed abroad or is currently employed in the United States in a managerial or executive capacity. The Director also determined that that Petitioner did not establish that it was doing business for at least one year before this petition was filed, or that the foreign parent company for which the Beneficiary previously worked is currently conducting business. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner did not sufficiently establish that it was doing business for at least one year prior to the date the petition was filed. Since the identified basis for denial is dispositive of the Petitioner's appeal, we will reserve the other issues of whether the Beneficiary was employed abroad and will continue to be employed in the United States in a managerial or executive capacity, and whether the foreign parent company for which the Beneficiary previously worked is currently conducting business. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

I. LEGAL FRAMEWORK

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity,

and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

II. ANALYSIS

A. Doing Business

The issue to be addressed is whether the Petitioner had been doing business for at least one year prior to the date the petition was filed.¹ The term doing business is defined as the regular, systematic, and continuous provision of goods and/or services and does not include the mere presence of an agent or office. *See* 8 C.F.R. § 204.5(j)(2).

The record indicates that the Petitioner was incorporated under the laws of the State of Delaware in [REDACTED] 2015. At the time of filing, it claimed to be operating as a data integration solutions provider in [REDACTED] with three employees: an architect, an integration specialist, and the Beneficiary as CEO.

In support of the petition, the Petitioner submitted a copy of its IRS Form 1120, U.S. Corporation Income Tax Return, for fiscal year 2018, covering the tax year from July 1, 2018, to June 30, 2019, as well as an internally generated income statement for the period from July 1, 2019, to October 31, 2019. It also provided a document entitled “Accounts Receivable Aging Data,” which it claimed demonstrated the existence of active clients and respective invoicing, copies of its December 2019 bank statements, a general ledger printout listing the company’s active debits and credits, several work proposals, and copies of invoices for its virtual office space for November 2019. The Petitioner also submitted several invoices to clients for services rendered between August and November 2019.

In a request for evidence (RFE), the Director requested that the Petitioner provide evidence to substantiate its regular, systematic, and continuous provision of goods and services, including receipts and invoices from December 2018 to December 2019, the one-year period immediately prior to the petition’s filing. In response to the RFE, the Petitioner referred to its previously submitted documentation, and submitted new evidence pertaining to its 2020 business operations, including a lease agreement, representative client proposals, email correspondence, payroll records and personnel information. The Petitioner asserted that it is currently doing business, and that it submitted sufficient

¹ The petition was filed on December 26, 2019. The Petitioner therefore must show that it was doing business from December 26, 2018, through December 25, 2019.

evidence in its initial submission to demonstrate that it had been doing business for the year prior to the filing of the petition.

In denying the petition, the Director determined that the documentation submitted was insufficient to demonstrate that the Petitioner had been doing business for at least one year prior to the date the petition was filed, as required by the regulations. The Director noted that despite submitting financial documentation and evidence in the form of an unaudited income sheet and internal spreadsheet of its outstanding invoices, such documentation did not establish that the Petitioner was regularly, systematically, and continuously providing goods and/or services and required by the regulatory definition. The Director further noted that while the Petitioner had demonstrated that it secured a physical workspace to conduct business by virtue of its rental agreements with WeWork, the evidence in the record using alternative office addresses in other states raised questions regarding the viability of its claimed business operations in New York.

On appeal, the Petitioner argues that the Director impermissibly expanded and thus misapplied the regulatory definition of “doing business.” The Petitioner asserts that it provided sufficient evidence, including documentation of its corporate good standing, evidence of its leased office space in [REDACTED] [REDACTED] for the 2020 calendar year, insurance coverage, audited financial statements,² payroll records, and contracts/invoices, and that the Director erred by looking at this evidence individually “instead of as part of the whole.” The Petitioner argues that the financial documentation submitted, which demonstrates that the company earned income during the relevant period and that it properly compensated its employees, constitutes evidence of doing business.

Upon review, the Petitioner has not provided sufficient evidence to establish it regularly, systematically, and continuously provided goods and/or services in the year prior to the petition’s filing. The record as constituted includes little evidence to substantiate that the Petitioner was actually providing good and services to, and receiving payments from, customers.

Preliminarily, while we note the Petitioner’s supplemental evidence and assertions that it has secured a long-term lease, hired new employees, and continues to expand its business operations since the filing of the petition, the evidence pertaining to current and future operations is outside of the relevant time period for purposes of our analysis. As noted above, the Petitioner is required to demonstrate that it was regularly, systematically, and continuously providing goods and/or services from December 2018 through December 2019. As a result, the documentary evidence pertaining to its current operations is not probative.

In the RFE, the Director requested that the Petitioner provide evidence to substantiate its regular, systematic, and continuous provision of goods and services, including receipts and invoices. However, in support of the petition and in response to the RFE, the Petitioner primarily provided invoices reflecting its purchase of outsourced services from providers including law firms and accounting offices. The record also contains numerous invoices from vendors for the provision of receptionist

² The audited financial statements referenced by the Petitioner pertain to the foreign entity, not the U.S. company.

and administrative services, staffing and recruitment services, and marketing and social media advertising.

Regarding this evidence, the Petitioner explained that it was outsourcing its legal, accounting, payroll, recruiting, administrative, and marketing services in an attempt to actively build up its U.S. office, and that the invoices, which included bills from entities such as administrative services firms and staffing agencies, served as evidence “of the [Beneficiary’s] building up of the US office including hiring vendors for administrative tasks (including payroll, taxes, reception services and marketing).” The Petitioner asserts that the evidence of these transactions with outside vendors for business services demonstrates that it has actively been doing business as required by the regulations.

We disagree. Because the Petitioner was a service recipient, rather than a service provider, this documentation does not demonstrate that the Petitioner was providing goods or services, and therefore it does not establish that the Petitioner was doing business as of December 2018 and continuing through December 2019. *See* 8 C.F.R. § 204.5(j)(2). Moreover, the Petitioner’s claim that it was “actively building up” its operations undermines the claim that the Petitioner was regularly, systematically, and continuously providing data integration services in the year prior to the petition’s filing.

The Petitioner’s IRS Form 1120 for fiscal year 2018, covering the period from July 1, 2018, to June 30, 2019, reflected gross receipts or sales in the amount of \$545,253. However, despite the Petitioner’s asserted income reflected in the tax return, there is no documentation reflecting its regular, systematic, and continuous provision of goods and services or its receipt of payments related thereto. The Petitioner did not submit evidence reflecting how it earned the reported gross receipts of \$545,253 or what portion of that figure was earned between December 26, 2018, and June 30, 2019, the relevant period covered by the tax return for purposes of our analysis. If the Petitioner was in fact engaged in activities consistent with the definition of “doing business” in the first half of 2019, it is reasonable to expect that the Petitioner would have invoices, receipts, or similar documentation to reflect those activities during that time period. Although the Petitioner submitted copies of invoices issued to clients between August 2019 and November 2019, the Petitioner did not provide similar documentation to account for the other eight months of the relevant 12-month period.³

Moreover, the Petitioner did not provide an IRS Form 1120 or other similar tax documentation for fiscal year 2019; therefore, the record contains no evidence of the Petitioner’s actual income for that period, and more specifically for the remaining portion of the relevant period from July 1, 2019, through December 25, 2019. Although the Petitioner provided an internally generated income statement for the period from July 1, 2019, to October 31, 2019, which indicated that its “sales accounts in general” for that period amounted to \$319,536, it similarly provided insufficient

³ Despite submitting invoices for this four-month period, the nature of the services represented by those invoices is unclear. For example, Invoice 1235, dated September 30, 2019, bills the client for “October 2019.” No specific goods or services are identified in the invoice, nor is there an accompanying work order or statement of work to explain the nature of this invoice. As a result, we are unable to determine whether this invoice represents the Petitioner’s provision of data integration services. Moreover, Invoice 1247, dated November 26, 2019, bills the client for a “2020 Subscription for [Petitioner] iPaaS Platform, Access, and Volume.” It is unclear if actual services were provided to the client during the relevant time period, or if the invoice reflects the provision of a future subscription service in 2020, which is outside of the relevant period.

documentary evidence of transactions, such as invoices or receipts, demonstrating how it earned this claimed amount during this four-month period. Although some of the submitted client invoices overlap the time period covered by the income statement, the document entitled “Accounts Receivable Aging Data” indicates that these invoices were either unpaid or past due as of October 31, 2019.

Finally, the Petitioner submitted copies of its federal payroll taxes for the second, third, and fourth quarters of 2019. The returns show the Petitioner paid wages to two employees in the second quarter and three employees in the third and fourth quarters. The names of the employees included in each return were not provided. While this documentation establishes that the Petitioner had employees on its payroll for a portion of the relevant time period, it does not indicate when the Petitioner began providing goods or services to clients or customers.

Here, the Petitioner has not sufficiently documented its regular, systematic, and continuous provision of goods and services for the period from December 26, 2018, through December 25, 2019. Rather, the evidence of heavily outsourced services during 2019, supported by the Petitioner’s claim that the Beneficiary’s implementation of those outside resources was in an attempt to “build up” the U.S. office, suggests that the Petitioner remained in an early stage of development in the year prior to the petition’s filing. Although some invoices were submitted, they pertain to only four months out of the relevant twelve-month period, and contain little information regarding the nature of the goods or services provided. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). We acknowledge the Petitioner’s claim that it has been doing business; however, it has not provided sufficient evidence to support this claim.

B. Other Issues

As previously indicated, we reserve the issues of whether the Beneficiary was employed abroad and will continue to be employed in the United States in a managerial or executive capacity, and whether the foreign parent company for which the Beneficiary previously worked is currently conducting business.

III. CONCLUSION

For the reasons discussed above, the Petitioner had not demonstrated that it was doing business for one year prior to the date the petition was filed as defined by the regulations. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.